

IN THE MATTER OF:

## Settlement Agreement for Recovery of Past Response Costs

U.S. EPA Region 2  
CERCLA Docket No-02-2010-2024

Proceeding Under Section 122(h)(1)  
of the Comprehensive Environ-  
mental Response, Compensation  
and Liability Act, as amended,  
42 U.S.C. § 9622(h)(1).

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director of the Emergency and Remedial Response Division by the Regional Administrator of EPA Region 2 by Order R-1200, November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and Air Products and Chemicals, Inc., Alco Industries, Inc., Bayer CropScience Inc. (as the corporate successor to Stauffer Chemical Company), Colonial Heights Packaging, Inc., Continental Holdings, Inc., Croda Inks Corporation, Henkel Corporation (for itself and on behalf of Amchem Products, Inc.), Kimberly-Clark Tissue Company, Sonoco Products Company, Stepan Company, Union Carbide Corporation (for itself and on behalf of Amchem Products, Inc.), USG Corporation, and United States Steel Corporation ("Settling Parties"). Each Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Settlement Agreement concerns the D'Imperio Property Superfund Site ("Site") located in Hamilton Township, Atlantic County, New Jersey. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will continue to take response actions at the Site. These actions included the initial investigations at the Site, a Remedial Investigation/Feasibility Study for the soil and the groundwater, and the remedial design and remedial action for the soil. Response actions also included various enforcement activities and the oversight of remedial design and remedial action work conducted by the Settling Parties.

5. Data collected during the investigations indicated the presence of hazardous substances in the soil and ground water. The hazardous substances detected in the soil include, but are not limited to, 1,2-dichloroethane, ethylbenzene, trichloroethylene, toluene, arsenic, chromium, and lead. The hazardous substances detected in the groundwater include, but are not limited to, 1,2-dichloroethane, methylbenzene, trichloroethylene, toluene, chromium, and lead.

6. In 1985, EPA issued a record of decision ("ROD"). The remedy selected in the ROD provided for, *inter alia*, excavation of contaminated soils, construction of a Resource Conservation and Recovery Act cap over the excavated area, and the installation of a groundwater extraction and treatment system to remediate the contamination at the Site. EPA completed the soil excavation

required by the ROD in 1987.

7. In 1992, the United States, on behalf of EPA, filed a complaint under Section 107(a) of CERCLA against 11 generators and two transporters, Jerome Lightman and Lightman Drum Company, seeking reimbursement of costs incurred in connection with the release of hazardous substances at the Site ("1992 Cost Recovery Action").

8. In August 1993, EPA issued an Administrative Order, Index No. II-CERCLA--20117 ("August 1993 Order") to 14 potentially responsible parties ("PRPs"), including Jerome Lightman and Lightman Drum Company. EPA modified the August 1993 Order in October 1993, January 1994, and January 2000. The respondents to the August 1993 Order, as modified, were directed to conduct a groundwater investigation, perform the groundwater remedy and to conduct a study to determine whether any hazardous substances remained in the soil on Site that may pose a threat to human health and the environment.

9. In August 1995, EPA issued a second Administrative Order, Index No. II-CERCLA-95-0111 ("August 1995 Order") to two additional PRPs directing them to coordinate and participate with the recipients of the August 1993 Order, as modified, in performing the response actions at the Site. The recipients of the August 1993 Order, as modified, and the August 1995 Orders (collectively the "1993/1995 Orders") included all of the Settling Parties, except Henkel Corporation. The recipients of the 1993/1995 Orders, with the exception of Jerome Lightman and Lightman Drum Company, are performing the response actions required by the 1993/1995 Orders.

10. In 1999, the United States entered into a judicial consent decree with 20 defendants, including the Settling Parties, in *United States v. Jerome Lightman et al.*, Civil Action No. 92-4710 (J'S) (D. N.J.) ("1999 Consent Decree"). The 1999 Consent Decree settled the 1992 Cost Recovery Action but did not include defendants Jerome Lightman and Lightman Drum Company. Under the terms of the 1999 Consent Decree, the 20 defendants reimbursed EPA \$7.1 million in response costs, plus interest accrued through September 1, 1999. The 1999 Consent Decree also granted the 20 defendants a covenant not to sue under Section 107(a) of CERCLA for, *inter alia*, Future Oversight Costs as defined therein.

11. The United States entered into a separate judicial consent decree in 2001 with Jerome Lightman and Lightman Drum Company based on their limited ability to pay.

12. On July 3, 2003, EPA issued a Record of Decision Amendment ("ROD Amendment") documenting the selection of the amended remedy for the soil at the Site. The ROD Amendment changed the remedy from construction of a Resource Conservation and Recovery Act cap to extraction of vapors contaminated with volatile organic compounds from the subsurface soil.

13. On November 4, 2003, EPA issued another Administrative Order, U.S. EPA Index No. CERCLA-02-2003-2039 ("November 2003 Order") directing the Settling Parties to construct, operate, and maintain the remedy selected in the ROD Amendment. The Settling Parties are

currently performing the work required by the November 2003 Order.

14. In performing the response actions, EPA has incurred response costs at or in connection with the Site, including the costs of overseeing the Settling Parties perform the work required by the November 2003 Order.

15. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

16. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

17. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

18. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "August 1993 Order" shall mean Administrative Order, Index No. II-CERCLA-20117 issued by EPA on August 5, 1993, as modified on October 14, 1993, January 14, 1994, and January 7, 2000, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, regarding the Site.

b. "August 1995 Order" shall mean Administrative Order, Index No. II-CERCLA-95-0111 issued by EPA on August 20, 1995, as modified on January 7, 2000, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, regarding the Site

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVI.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "Future Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after February 28, 2010, in reviewing or developing plans, reports and other deliverables submitted pursuant to the November 2003 Order, in overseeing implementation of the work required by the November 2003 Order, or otherwise implementing, overseeing, or enforcing the November 2003 Order, including, but not limited to, payroll costs, the cost of attorney time, contractor costs, travel costs, laboratory costs, and all other costs incurred by the United States relating to the November 2003 Order.

h. "Future Response Costs" shall mean all "Future Oversight Costs" and all other costs, including, but not limited to, direct and indirect costs that the United States incurs after February 28, 2010, relating to the Site. Future Response Costs shall not include those costs which are "Future Oversight Costs," as that term is defined in the 1999 Consent Decree, incurred by EPA for oversight of response actions performed by the Settling Parties pursuant to the 1993/1995 Orders. Future Response Costs shall also include all Interest on those Past Response Costs Settling Parties have agreed to pay under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from February 28, 2010 to the Effective Date.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "November 2003 Order" shall mean Administrative Order, U.S. EPA Index No. CERCLA-02-2003-2039, issued by EPA on November 4, 2003, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, regarding the Site.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

m. "Parties" shall mean EPA and Settling Parties.

n. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through February 28, 2010, plus accrued Interest on all such costs through such date.

o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

p. "Settlement Agreement" shall mean this Settlement Agreement. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

q. "Settling Parties" shall mean Air Products and Chemicals, Inc., Alco Industries, Inc., Bayer CropScience Inc. (as the corporate successor to Stauffer Chemical Company), Colonial Heights Packaging, Inc., Continental Holdings, Inc., Croda Inks Corporation, Henkel Corporation (for itself and on behalf of Amchem Products, Inc.), Kimberly-Clark Tissue Company, Sonoco Products Company, Stepan Company, Union Carbide Corporation (for itself and on behalf of Amchem Products, Inc.), USG Corporation, and United States Steel Corporation.

r. "Site" shall mean the D'Imperio Property Superfund Site, located within a triangle formed by the intersections of U.S. Route 322 (Black Horse Pike), U.S. 40 and Cologne Road in Hamilton Township, Atlantic County, New Jersey. The Site includes the real property consisting of approximately 15 acres identified as Block 1134, Lot 3.03 in the tax map of Hamilton Township. The Site shall also mean any real property located outside the legal boundaries of Lot 3.03 identified above, into which or under which hazardous substances have migrated.

s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## **V. PAYMENT OF RESPONSE COSTS**

### **19. Payment of Response Costs.**

a. Payment of Past Response Costs. Within 30 days of the Effective Date, Settling Parties shall pay to EPA \$443,805.61 plus an additional sum for Interest on that amount calculated from February 28, 2010, through the date of payment.

b. Payment of Future Response Costs. Settling Parties shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Settling Parties a bill requiring payment that includes a printout of cost data in EPA's financial management system, known as a SCORPIOS report, and a calculation of EPA's indirect costs. Settling Parties

shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Section VI (Dispute Resolution) of this Settlement Agreement.

20. Settling Parties shall make payments required by Paragraph 19 to EPA by Electronic Funds Transfer ("EFT"), along with the following information, to EPA's account with the Federal Reserve Bank as follows:

- i. Amount of Payment
- ii. Title of Federal Reserve Bank account to receive the payment: EPA
- iii. Address of Federal Reserve Bank account to receive the payment:  
33 Liberty Street  
New York, NY 10045  
SWIFT Address: FRNNYUUS33
- iv. Account code for Federal Reserve Bank account receiving the payment: 68010727
- v. Federal Reserve Bank ABA Routing Number: 021030004;
- vi. Name of Party making payment;
- vii. A message in Field Tag 4200 of the EFT that reads "D 68010727 Environmental Protection Agency"
- vii. Site/Spill Identifier Number: 02-21
- viii. The case docket number: 02-2010-2024.

21. At the time of payment under Paragraph 19, Settling Parties shall also send notice that payment has been made which references the date of the EFT, the amount of the payment, the name of the Site, the Site/Spill ID Number, the EPA docket number, and the name and address of the party making payment to EPA to the following:

New Jersey Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway, 19<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: D'Imperio Property Superfund Site  
Remedial Project Manager

New Jersey Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: D'Imperio Property Superfund Site Attorney

U.S. Environmental Protection Agency  
Attn: Richard Rice



26 W. Martin Luther King Drive  
Cincinnati Finance Center, MS: NWD  
Cincinnati, Ohio 45268  
email: AcctsReceivable.CINWD@epa.gov and  
rice.richard@epa.gov

22. The total amounts to be paid pursuant to Paragraph 19 by Settling Parties shall be deposited in the D'Imperio Property Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. Settling Parties may contest payment of any Future Response Costs billed under Paragraph 19 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to EPA pursuant to Section XIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Parties shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 20. Simultaneously, Settling Parties shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Parties shall send to EPA pursuant to Section XIII (Notices and Submissions) a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Parties shall initiate the Dispute Resolution procedures in Section VI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Settling Parties shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 20. If Settling Parties prevail concerning any aspect of the contested costs, Settling Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 20. Settling Parties shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Parties' obligation to reimburse EPA for its Future Response Costs.

## **VI. DISPUTE RESOLUTION**

24. The dispute resolution procedures set forth in this Section shall be the exclusive mechanism for resolving disputes regarding Settling Parties' obligation to reimburse EPA for

Future Response Costs. The dispute resolution procedures in this Section are limited to disputes regarding recovery of Future Response Costs. Nothing in this Section shall be deemed to create a right to pre-enforcement review or dispute resolution of response actions taken or to be taken by EPA.

25. If Settling Parties object to any billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 30 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Parties shall have 45 days from EPA's receipt of Settling Parties' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

26. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the EPA Region 2 Director of the Emergency and Remedial Response Division level or higher will issue a written decision on the dispute to Settling Parties. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Settling Parties' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Parties shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

## **VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

27. Interest on Late Payments. If any Settling Party fails to make any payment required by Paragraph 19 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

28. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 19 are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraphs 19 and 27, \$1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be paid in accordance with the instructions in Paragraph 20.

c. At the time of each payment, Settling Parties shall also send notice that payment has been made to EPA in accordance with the instructions in Paragraph 21.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

29. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party who fails or refuses to comply with the requirements of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

30. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the failure of any one or more Settling Parties to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.

31. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

#### **VIII. COVENANT NOT TO SUE BY EPA**

32. Covenant Not to Sue by EPA. In consideration of payments that will be made by Settling Parties under the terms of this Settlement Agreement and except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section V of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections V and VII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Parties of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section V. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

#### **IX. RESERVATIONS OF RIGHTS BY EPA**

33. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue

by EPA in Paragraph 32. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs, or within the definition of Future Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. liability for response actions that EPA determines are required for the Site;
- e. liability arising from past, present or future disposal, release, or threat of release of hazardous substances outside the Site;
- f. criminal liability; and
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

34. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **X. COVENANT NOT TO SUE BY SETTLING PARTIES**

35. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs or Future Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of

CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs or Future Response Costs.

36. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VIII.

37. Settling Parties agree that the period commencing on the Effective Date and ending on December 31, 2017 (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site. Settling Parties also agree not to assert any defense that a statutory limitations period has expired during the Tolling Period under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), or under any other federal statute. In any action brought by the United States after the Effective Date, the Settling Parties also agree not to assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any affirmative defense, including, but not limited to, laches, estoppel, waiver or other equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period.

38. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

39. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

40. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than in proceedings to implement or enforce this Settlement Agreement, the

validity of the facts or allegations contained in Section II of this Settlement Agreement.

41. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Parties have, as of the Effective Date, resolved their liability to the United States for Past Response Costs.

42. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

## **XII. RETENTION OF RECORDS**

43. a. Each Settling Party shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site pursuant to the retention periods contained in the 1993/1995 Orders and the November 2003 Order.

b. Each Settling Party shall preserve and retain, until 10 years after the Effective Date, all records now in its possession or control, or which come into its possession or control, that relate in any manner to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

44. After the conclusion of the document retention periods in the preceding paragraph, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records that they

claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

45. Each Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XIII. NOTICES AND SUBMISSIONS**

46. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

#### **As to EPA:**

New Jersey Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway, 19<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: D'Imperio Property Superfund Site  
Remedial Project Manager

New Jersey Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: D'Imperio Property Superfund Site Attorney

#### **As to Settling Parties:**

[Insert name and address of one person who will serve as the contact for all Settling Parties]

#### **XIV. INTEGRATION**

47. This Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

#### **XV. PUBLIC COMMENT**

48. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

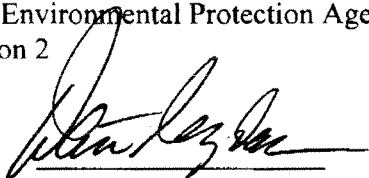
#### **XVI. EFFECTIVE DATE**

49. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Settling Parties that the public comment period pursuant to Paragraph 48 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency  
Region 2

By:

  
Walter Mugdan, Director  
Emergency and Remedial  
Response Division

JAN. 4, 2011  
Date

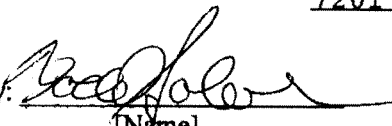


THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: Air Products and Chemicals, Inc.  
[Name]

7201 Hamilton Boulevard, Allentown, PA 18195  
[Address]

By:

  
[Name]

19 November 2010  
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: Alco Industries, Inc.  
[Name]  
820 Adams Ave, Norristown, PA 19403  
[Address]

By: Daniel Damstra 11/19/10  
[Name] [Date]

Daniel Damstra  
Vice President, Secretary  
& General Counsel

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA Docket No. 02-2010-2024:

FOR SETTLING PARTY:

Bayer CropScience Inc., corporate successor to  
Stauffer Chemical Company

By:



Glen Stuart  
*Outside Counsel on behalf of Stauffer  
Management Company, Litigation Agent for  
BCSI*  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103

Date: November 29, 2010

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: Colonial Heights Packaging Inc.  
[Name]

6601 West Broad Street, Richmond, VA 23230  
[Address]

By: Robert M. Buell 12/3/10  
[Name] [Date]


THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY:

Continental Holdings, Inc.  
[Name]

\_\_\_\_\_  
[Address]

By:

  
\_\_\_\_\_  
[Name]

Gregory T. Diamond

12/10/10  
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

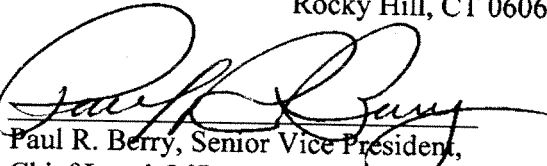
FOR SETTLING PARTY: Croda Inks Corp.  
300 <sup>[Name]</sup> Columbus Circle, Edison, NJ.  
[Address]

By: Novack Bernbaum Crystal LLP 11/29/10  
[Name] [Date]

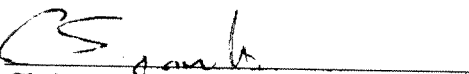
By: Humble & H  
Attorney for Croda Inks Corp.

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA Docket No-02-2010-2024:

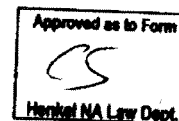
FOR SETTLING PARTY: Henkel Corporation, for itself and on behalf of Amchem Products, Inc.  
One Henkel Way  
Rocky Hill, CT 06067

By:   
Paul R. Berry, Senior Vice President,  
Chief Legal Officer & Secretary

11/24/10  
Date

By:   
Christopher J. Signorello, Assistant  
General Counsel, Litigation

11/23/10  
Date



THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA Docket  
No-02-2010-2024:

FOR SETTLING PARTY:

Name:

Kimberly-Clark Corporation, successor-in-interest to Kimberly-Clark Tissue Company, f/k/a/  
Scott Paper Company

Address:

1400 Holcomb Bridge Road  
Roswell, GA 30076

By:

Susan L. Gaynor  
[Name]

11/30/2010  
[Date]

Susan L. Gaynor



THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: Sonoco Products Company  
[Name]  
Hartsville, S.C. 29556  
[Address]

By: Thomas R. Gottshall Dec 17, 2010  
[Name] [Date]

*its attorney*  
Haynesworth Ginsler Boyd, PA  
1201 Main St., Suite 2200  
Columbia, S.C. 29201

FOR SETTLING PARTY: Stepan Company  
[Name]  
22 West Frontage Road, Northfield, IL 60093  
[Address]

By: *H. Edward Hey* November 24, 2010  
[Name] [Date]

By:

H. Edward Hey  
[Name]

[Address]

November 24, 2010

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: Union Carbide Corporation, for itself and on behalf of  
[Name]  
100 Independence Mall West, Amchem Products, Inc.  
[Address] Philadelphia, PA 19106

By: [Signature] 11/22/2010  
[Name] [Date]

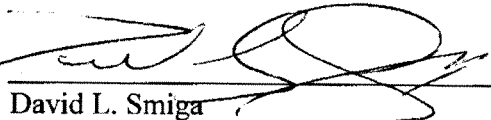
THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of  
D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA  
Docket No-02-2010-2024:

FOR SETTLING PARTY: USG CORPORATION  
[Name]  
550 W. Adams St., Chicago, IL 60661  
[Address]

By: Christopher J. Melon 11/22/10  
[Name] [Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of D'Imperio Property Superfund Site, Hamilton Township, Atlantic County, New Jersey, CERCLA Docket No-02-2010-2024:

FOR SETTLING PARTY: United States Steel Corporation  
600 Grant Street  
Pittsburgh, PA 15219

By:   
David L. Smiga  
Assistant General Counsel – Environmental

November 22, 2010  
Date

